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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CARLOS E. KEPKE,

17 Defendant.

Case No. 3:21-CR-0155-JD

**[PROPOSED] ORDER TO EXCLUDE,
OR IN THE ALTERNATIVE, TO LIMIT
CERTAIN OPINIONS AND
TESTIMONY OF AGENT JAMES
OERTEL**

[PROPOSED] ORDER

Having considered Defendant Carlos Kepke's Motion to Exclude, or in the Alternative, to Limit Certain Opinions and Testimony of Agent James Oertel ("Motion"), the Court finds the following:

1. That Agent James Oertel may not be used as a conduit for inadmissible hearsay and any testimony by Agent Oertel that summarizes the statements of out-of-court declarants is improper and thus inadmissible and
2. That any portion of Agent James Oertel's testimony that provides legal conclusions is inadmissible under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). This includes, but is not limited to, any testimony by Agent Oertel that the evidence in this case will establish: (i) "that [Mr. Kepke] worked with Smith to conceal a portion of Smith's income from the IRS, thus evading the tax due on that income," (ii) that this "was accomplished using offshore entities which [Mr. Kepke] created and managed," and (iii) that Mr. Kepke "knew [that] Smith actually earned this income, and retained full dominion and control over it, [but] [n]evertheless, advised Smith to hide the fact that this income existed, as well as Smith's true ownership and control over it, from Smith's income tax return preparers."

IT IS SO ORDERED that the Motion is GRANTED and the above-mentioned portions of Agent James Oertel's opinions and testimony are excluded.

IT IS SO FURTHER ORDERED that the government shall produce the Federal Rule of Evidence 1006 materials that Agent James Oertel intends to rely upon for his testimony no later than October 24, 2022.

Dated: _____

Hon. James Donato
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **August 5, 2022**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **August 5, 2022** in Los Altos, California.

/s/ Grant P. Fondo

GRANT P. FONDO